

TERMINATION OF EMPLOYMENT

This factsheet is intended to assist member businesses with termination of employment. The following information should be used as a guide only.

Note: This document should be read in conjunction with our Disciplinary and Warning Procedures Factsheet, Small Business Fair Dismissal Code and Checklist, Unfair Dismissal Factsheet, and General Protections and Discrimination Claims Factsheet.

Contacting the Victorian Chamber of Commerce and Industry

The Victorian Chamber's team of experienced workplace relations advisors can assist members with a range of employment, human resources and industrial relations issues.

Our experienced workplace relations consultants can also provide assistance to both members and non-members on a range of more complex matters for a fee-for-service. The consultants can, among other things, provide training to employees, conduct investigations and provide representation at proceedings at the Fair Work Commission.

For assistance or more information, please contact the Workplace Relations Advice Line on (03) 8662 5222.

Disclaimer

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TIPS FOR NAVIGATING TERMINATION OF EMPLOYMENT

Navigating a termination of employment can be a daunting process. An employer choosing to progress with ending employment without considering a proper process can expose the business to unnecessary risk. Consider the below tips when developing a termination strategy:

1. **Employment terms and conditions:** Employees in Australia have terms and conditions enshrined in the Fair Work Act 2009 and the National Minimum Wage. Ensure you are aware of obligations relating to payment, administrative requirements and notice provisions. You should also consider the applicable Modern Award or Enterprise Bargaining Agreement terms, as well as any contractual obligations.
2. **Apply any applicable procedural framework:** Businesses should be aware of procedural obligations deriving from: policies/procedures, Enterprise Bargaining Agreements, contracts and legislation. A robust understanding of these requirements will assist in demonstrating a fair termination process.
3. **Ensure a valid reason for ending employment:** This reason might relate to conduct or performance. Having a clear, fair and defensible reason will assist the business if faced with claims of Adverse Action or Unfair Dismissal.
4. **Opportunity to respond:** During your process, take the opportunity to provide a forum for hearing the employees view. This can help to demonstrate a fair procedure of termination. In practise, this can be implemented during a disciplinary meeting by asking for the employee's response, or through a consultation about a redundancy.
5. **Process final payments correctly:** A final pay can be technical and needs to be calculated correctly to ensure an overpayment or an underpayment is avoided. A final pay can include a payment of accrued annual leave, long service leave, notice paid in lieu, redundancy pay, unused RDOs/Time In Lieu, and any other outstanding monies. If you are unsure, speak to your accountant, payroll provider/officer or call the Workplace Relations Advice Line on 8662 5222.

TERMINATION CHECKLIST

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| Employee: | Date effective: |
| Home or forwarding address: | |
| Termination Considerations | |
| 1. Consider the time and resources to replace and train a new employee. The termination should be treated as a last resort. | <input type="checkbox"/> |
| 2. Consider whether you have a valid reason for dismissal and documents to support that reason. | <input type="checkbox"/> |
| 3. Ensure you have appropriately managed any conduct and/or performance issues. See the Performance Management Checklist. | <input type="checkbox"/> |
| 4. Check the termination of employment provisions in the employee's terms and conditions of employment (for example an applicable award, agreement, contract, or other industrial instrument). Ensure you comply with these provisions. | <input type="checkbox"/> |
| 5. Check whether you have a Termination Policy and make sure you comply with the procedures outlined in the Policy when terminating the employee's employment. If the employee is being terminated for reason of redundancy, see the Redundancy Checklist. | <input type="checkbox"/> |
| 6. Check what legislative provisions apply in relation to the termination. | <input type="checkbox"/> |
| 7. Ensure the reason for dismissal is not unlawful or discriminatory. | <input type="checkbox"/> |
| 8. Act fairly in conducting the dismissal. | <input type="checkbox"/> |
| 9. Inform the employee of the meeting in advance and provide them with an opportunity to have a support person present. | <input type="checkbox"/> |
| 10. Meet with the employee to discuss the reason(s) for the dismissal. | <input type="checkbox"/> |
| 11. Allow the employee an opportunity to respond. | <input type="checkbox"/> |
| 12. Discuss any prior warnings. | <input type="checkbox"/> |
| 13. Inform the employee of the dismissal and the reason(s). | <input type="checkbox"/> |
| 14. Keep a record of the discussion with employee. | <input type="checkbox"/> |
| 15. Calculate the employee's pay-out entitlements as at the date the termination of employment will take effect and prepare a detailed statement to issue to the employee. | <input type="checkbox"/> |
| 16. Notice: there are minimum notice requirements in the <i>Fair Work Act 2009</i> (Cth), which must be complied with. However, if the employee's contract of employment, applicable award or agreement provides a more generous notice entitlement, you should apply this notice period. If the employee does not have an up-to-date contract of employment or if it does not expressly state the required notice period, a period of reasonable notice may be implied. This may be more than the minimum notice requirements in the <i>Fair Work Act 2009</i> (Cth). As such, you should seek legal advice before terminating the employee's employment. | <input type="checkbox"/> |

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| 17. Notify the employee of his/her termination in writing stating the reasons for the dismissal and their final date of employment. You should make sure these reasons do not expose your business to the risk of legal action. For example, the reasons should not be discriminatory or unlawful. | <input type="checkbox"/> |
| 18. Summary dismissal: if the conduct of the employee is wilful or deliberate behaviour that is inconsistent with the continuation of the contract of employment, it may be sufficiently serious to warrant summary dismissal. In circumstances of serious or wilful misconduct, an employer can dispense with notice of termination and dismiss the employee instantly. <i>[In such circumstances, check whether your business has a disciplinary policy and if so comply with it. Ensure the investigation process is conducted fairly and give the employee an opportunity to respond to the allegations.]</i> If you are not sure whether the employee's actions warrant a summary dismissal, seek legal advice prior to terminating the employment. | <input type="checkbox"/> |
| 19. Payment in lieu of notice: if you are concerned about the employee remaining in the business during any relevant notice period, you may make a payment to them in lieu of notice if the employee's contract of employment, award or agreement, allows you to do so. Alternatively, you may have the employee stay at home rather than performing work if there is a provision to enable this in their terms of engagement (this is commonly known as placing the employee on gardening leave during their notice period). | <input type="checkbox"/> |
| 20. Notify other parties affected by the termination, (e.g. the employee's superannuation fund, workers' compensation and other insurers (where relevant), other employees and managers, payroll, key customers, security and IT etc.). If the termination of the employee's employment is for performance or conduct related issues, keep the reasons for the termination confidential. | <input type="checkbox"/> |
| 21. Arrange the return of any property of the employer which is in the employee's custody, possession or control (eg company provided vehicle, mobile telephone, laptop, business cards, office keys, security passes etc.). Also, change any passwords and other security measures, which would allow the employee in question to continue to gain access to the business or its computer network. See the Property Return Checklist. | <input type="checkbox"/> |
| 22. Provide a statement of service if required by an applicable award or agreement, or where requested by the employee. If the employee has requested a written reference, seek legal advice before agreeing to this request. | <input type="checkbox"/> |
| 23. Small businesses should comply with the Small Business Fair Dismissal Code ('Code'). The Code currently applies to national-system employers that employ fewer than 15 employees (on a headcount basis). If a small business employer can demonstrate compliance with the Code, the employee will be precluded from claiming they have been unfairly dismissed. | <input type="checkbox"/> |

Prior to departure:

Termination/resignation documents received and placed on the employee's personnel file.

On departure

Complete the Property Return Checklist

Payroll and Administration

Advise Payroll/Accounts:

> Termination date

> Final pay

WORKPLACE RELATIONS > HUMAN RESOURCES

(Note: When these forms are edited, they are deemed uncontrolled by the Victorian Chamber of Commerce and Industry)



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| > Leave entitlement pay-out | <input type="checkbox"/> |
| > Summary of expenses | <input type="checkbox"/> |
| > Issue a Group Certificate to the relevant employee, within required time period after the employee's employment ceases. | <input type="checkbox"/> |
| > Update the employee's employment records to record all details of the termination of the employee's employment. | <input type="checkbox"/> |
| > Other [insert relevant information] | <input type="checkbox"/> |

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|------|----------------------------------------|
| Date | Office Manager/Human Resources Manager |
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